

Choke, Suffocate or Strangle to Commit Indictable Offence

s.37(2) (NSW) Crimes Act

s 37 Do any of the following with intent to commit an indictable offence:

by any means attempts to choke suffocate or strangle any person

by any means calculated to choke suffocate or strangle, attempts to render any person insensible unconscious or incapable of resistance

Maximum penalty: 25 years

Substituted: 5.6.2014

s 37(2) Choke, suffocate or strangle another person so as to render the other person unconscious, insensible or incapable of resistance with the intention of committing, another indictable offence.

Maximum penalty: 25 years

NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
HQ [2003] NSWCCA 336	s.37 [agg indecent assault] s.37 [agg indecent assault] s.61J	PG	FT 7y 11y NPP 8y FT 10y <u>Total:</u> 13y NPP 10y 3m	AD	Assaults	Threatened 15y old step-daughter with knife asking if he could touch her – victim resisted - made threats that he would kill her brother and cousin - twice attempted to strangle victim – on second attempt victim lapsed into semi-consciousness, and offender committed sexual assault offence
McKechnie (31) [2006] NSWCCA 13	s.37 [sexual assault] s.61J	VG	15y NPP 11y 15y NPP 11y (concurrent)	AD	Extensive including violence - on bail	Attacked victim as she was leaving beach – attempted to choke victim – digital and penile penetration.

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
MW (36) [2007] NSWCCA 291	s.37 [sexual assault] s.61J Sched: Act indecency	PG (25%)	8y NPP 5y 6m 8y NPP 5y 6m (concurrent)	Crown AA 11y NPP 8y FT 6y <u>Total:</u> 12y NPP 9y	Robbery, assault	Stepfather to 17y victim – angry with victim for calling police over incident between offender and victim’s mother – attacked victim in park – tried to gag victim with tea towel and tape – inserted finger in victim’s vagina – attempted penile penetration before grabbing victim’s throat and victim lost consciousness. Suffering significant degree of drug intoxication at time of offence – history of drug abuse.
Munn (27) [2009] NSWCCA 218	s.37 [mal inflict GBH] s.59(1) AOABH	VG PG	9y NPP 5y 6m FT 18m <u>Total:</u> 10y NPP 6y 6m	AD	Violence, dishonesty	Assaulted estranged partner who wished to end relationship – victim gave offender lift in car - punched victim to head several times – victim lost control of vehicle and collided with another car – offender attempted to strangle victim – victim suffered loss of consciousness or approaching loss of consciousness. Suffered brain injury when young – previous admissions to psychiatric hospitals - drug abuse history.
Cutrale (39) [2011] NSWCCA 214	s.37 s.61I	PG (25%)	9y NPP 6y 9m 7y NPP 5y 3m (concurrent)	Crown AA 9y NPP 6y 3m 7y NPP 5y 3m <u>Total:</u> 11y NPP 8y 3m	not significant	Grabbed female stranger walking into home units late at night – dragged her to nearby park – placed hand around throat and squeezed until she could not breathe – also placed hand over nose and mouth – offender had intercourse with victim while she was unconscious -
Bland (20) [2014] NSWCCA 82	s.37 [detain without consent] s.61M(2) Sched: 2 offences	PG (28.5%)	8y NPP 4y 5y NPP 3y 9m <u>Total:</u> 10y NPP 6y	AD	nil	Entered home of 15y brother of friend after victim’s father left for work – placed bag over head of sleeping victim and tied hands to bed – masturbated victim for 10 seconds – slapped around head during struggle – blocked mouth and nose and held hands around throat until victim nearly passed out – left after victim continued to struggle Some psychological problems

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NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
O'Connor (30) [2014] NSWCCA 53	s.37 [intimidate]	VG	4y	Crown AA 4y	extensive – breached bail for serious traffic matters	Had formed intimate relationship with victim – on night of offence victim declined intercourse – straddled victim in her bed and choked her causing her to fall off bed – kept hands around throat and lifted victim from floor into nearby lounge causing unconsciousness – victim awake to find herself in bed, gagged by bloodstained sock and hands tied by cable ties – offender cut off dress with scissors – threatened and laughed at victim – allowed her to be sick in bathroom – forced penile/vaginal intercourse from behind Subsequently assaulted sustaining serious brain injury in custody
	s.37 [intimidate]		4y	10y		
	s.61J		7y NPP 3y	10y NPP 7y 6m		
	Sched: 5 offences		<u>Aggregate:</u> 9y NPP 3y 10m	<u>Aggregate:</u> 14y NPP 10y 6m		

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